

AUTHORIZING THE SECRETARY OF THE INTERIOR TO CONSTRUCT FACILITIES TO PROVIDE WATER FOR IRRIGATION, MUNICIPAL, DOMESTIC, MILITARY, AND OTHER USES FROM THE SANTA MARGARITA RIVER, CALIFORNIA, AND FOR OTHER PURPOSES

DECEMBER 19, 2007.—Ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 29]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 29) to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 29 is to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

During the early 1900s, agriculture and ranching developed in the upper Santa Margarita River basin using water diverted from the Santa Margarita River and water extracted from wells near the river. By 1940, base flow in the river had been reduced to such an extent that water users in the lower basin filed a lawsuit against water users in the upper basin. The result of this lawsuit was the “1940 Stipulated Judgment,” which partitioned water between the upper basin and the lower basin. Since then, three other major lawsuits over rights to this water have taken place, and three planned water supply projects have failed to resolve the conflicts.

The most recent of these projects, the Santa Margarita Project, was to use federal money to develop a two dam and reservoir

project on the river for the benefit of Fallbrook Public Utility District and the U.S. Marine Corps Base at Camp Pendleton. The estimated cost of the project was \$22 million in 1954 dollars, or \$254 million in today's dollars. The effort to implement this project stalled in 1984 after almost twenty-two years of study and significant state and federal agency support.

The lack of adequate water supply poses a serious problem for water users in the Santa Margarita River basin. Urbanization, especially since 1970, has transformed the area in San Diego County from large ranches to tract homes. In the lower basin, the modest agricultural use of land and water, primarily for citrus and avocado trees, has stayed relatively constant. The creation of Camp Pendleton Marine Base, which covers most of the lower basin, added a relatively small, constant demand for water for base operations. Camp Pendleton officials, however, are concerned that future water demands in the lower basin could significantly increase in order to support a major military mobilization or to provide adequate habitat for endangered species.

One salient issue in the most recent project relates to three water rights permits held by Bureau of Reclamation totaling 185,000 acre-feet on the Santa Margarita River. These permits were intended for surface water impoundment that, at one time, Reclamation was proposing to develop. Under California law, these permits must be perfected (be put to beneficial use) by December 31, 2008 or the water rights may be lost.

The proposed Santa Margarita Conjunctive Use Project authorized by H.R. 29 provides for enhanced recharge and recovery from the underground basin on Camp Pendleton to provide a water supply for both Camp Pendleton and the Fallbrook Public Utility District (the District), as resolution of the long-standing water rights disputes between the United States and the District. The project, as proposed, will develop 16,000 acre-feet of water annually, including Camp Pendleton's existing perfected water rights on the Santa Margarita River. As envisioned by the bill, 9,600 acre-feet would be used by Camp Pendleton and 6,400 acre-feet by the District. An ongoing feasibility study being conducted by the Bureau of Reclamation is evaluating a reasonable range of project alternatives to develop the water supply.

The project will provide a safe, reliable, drought- and earthquake-proof water supply—enough for 35,000 families. The project would improve and partially privatize the water supply system on Camp Pendleton, which will receive better-quality water in quantities sufficient to meet water needs up to its ultimate planned utilization. The project also sets aside and preserves valuable riparian and upland habitats of one of the last free flowing rivers in California, using 1,384 acres originally purchased for a dam and reservoir.

The proposed project authorized by H.R. 29 includes the construction of enhanced groundwater recharge facilities that contain a new collapsible diversion weir and 46 acres of new recharge ponds. The enhanced recharge potential is 14,000 acre-feet per year (af/yr), in addition to the naturally occurring recharge. The collapsible weir will divert flows, facilitate transport of sediments to the lower river and estuary, and provide beach replenishment. The project will also include the construction of eight or more new pro-

duction wells, monitoring wells, and a collection system to provide a total of 18,000 af/yr of extraction capability. The project water will be distributed to the existing Camp Pendleton and the District distribution systems through construction of two pump stations and approximately thirteen miles of transmission pipeline. The pipeline will also connect Camp Pendleton to the regional water delivery system for emergency supply purposes.

Major activities taking place in preparation for project implementation include a pre-feasibility study completed by the Bureau of Reclamation for a joint feasibility study and Environmental Impact Report/Environmental Impact Statement under the California Environmental Quality Act and the National Environmental Policy Act. Funding for this effort comes from several federal sources, including Camp Pendleton, Military Construction, and a Reclamation Planning account, as well as local funding contributed by the Fallbrook Public Utility District.

Similar legislation was passed by the House of Representatives in the 108th and 109th Congresses.

COMMITTEE ACTION

H.R. 29 was introduced on January 4, 2007 by Rep. Darrell Issa (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. The bill was also referred to the Committee on Armed Services.

On October 10, 2007, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill, and H.R. 29 was ordered favorably reported to the House of Representatives by unanimous consent and without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1. Definitions

This section defines various terms in the bill.

Section 2. Authorization for construction of Santa Margarita River Project

This section authorizes the Secretary of the Interior to construct, operate, and maintain the Santa Margarita River Project in accordance with the final feasibility report and this Act. The Secretary may construct the Project only after the Secretary determines that: (1) the Fallbrook Public Utility District and the Department of the Navy have entered into contracts to repay to the United States appropriate costs; (2) the authorized California officer or agency has granted water use permits to the Bureau of Reclamation; (3) the District has agreed that it will not assert against the United States any prior right to water in excess of the quantity deliverable under this Act and will share water based on equal priority and a specified ratio; and (4) the Secretary has determined that the Project has economic, environmental, and engineering feasibility.

It is the intent of the Committee that all environmental and regulatory permits will be in place prior to initiating project development. The Bureau of Reclamation is expected to complete its feasibility report by June 2008. The draft Environmental Impact Re-

port/Environmental Impact Statement is expected to be ready for public review and comment by December 2008.

Section 3. Costs

Once the project is completed, the Department of the Navy will be responsible for project costs in proportion to its benefit from the project as determined by the Secretary of the Navy.

Section 4. Operation; Yield allotment; Delivery

The Secretary of the Interior, the Fallbrook Public Utility District, or a third party may operate the project, subject to the terms of a memorandum of agreement. Sixty percent of the project water supply is allotted to the Navy and forty percent is allotted to the District. Temporary water delivery contracts may be entered into for any unused portion of the Navy's allocation; the District is given first right to this water. The Navy retains the right to demand the use of water after giving 30 days notice.

In the place of monetary payment, the Secretary of the Navy may accept in-kind consideration as deemed acceptable. In-kind consideration valued over \$500,000 must be reported to the House of Representatives. Moneys paid to the United States under the temporary water contracts shall be deposited into a special account for the Department of the Navy.

Section 5. Repayment obligation of the District

This section requires the District's general repayment obligation to be determined by the Secretary of the Interior, consistent with the Reclamation Project Act of 1939. For purposes of calculating interest and commencing repayment, pumping and treatment of groundwater from the project will be deemed equivalent to the first use of water from a water storage project. There will be no repayment obligation for excess water delivered to the Fallbrook Public Utility District under Section 4 of this bill.

Section 6. Transfer of care, operation, and maintenance

The Secretary of the Interior may transfer the operation and maintenance of the project to the District or a mutually agreed upon third party under conditions satisfactory to all parties, including the Secretary of the Navy, for the portion of the project located within Camp Pendleton. If a transfer occurs, the District will be credited for costs associated with the Secretary's share of the project's operation and maintenance.

Section 7. Scope of Act

This section states that the basis, measure, and limit of all rights of the United States pertaining to the use of water shall be the laws of the State of California. Four specific provisions are included in this section that limit how this section is to be construed with regard to water rights.

Section 8. Limitations on operation and administration

This section states that the Project shall be operated to allow free passage of water to which the United States is entitled, and will not be administered or operated in any way that would impair

or deplete the use of water the United States is entitled to use under California law.

Section 9. Authorizations of appropriations

The bill authorizes an appropriation of \$60 million for the planning, design, and construction of project facilities, to be indexed for inflation, and additional sums as necessary for project operation and maintenance purposes.

Section 10. Reports to Congress

The Secretary of the Interior and Secretary of the Navy will report to Congress, within one year of passage of this Act and periodically thereafter, on whether and how conditions for construction of the project have been met.

Section 11. Sunset

The authority of this Act will terminate 10 years after enactment.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 29—A bill to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes

Summary: H.R. 29 would authorize the Secretary of the Interior to participate in the design, planning, and construction of facilities to make water available from the Santa Margarita River for domestic and military uses. The bill would authorize the appropriation of \$60 million to build the project and such sums as are necessary to operate and maintain it. H.R. 29 would terminate the authority to implement this project 10 years after the date of enactment of this legislation.

Assuming appropriation of the necessary funds, CBO estimates that implementing H.R. 29 would cost \$61 million over the 2008–2012 period and an additional \$3 million after that period, including adjustments for anticipated inflation. If funds were appropriated to build this project, local users would be required to repay about 40 percent of construction costs over a 40-year period following completion of the project. Enacting this legislation, by itself, would not affect direct spending or revenues.

H.R. 29 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 29 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	0	6	19	19	20
Estimated Outlays	0	5	17	19	20

Basis of estimate: Based on historical spending patterns of similar projects, CBO estimates that implementing H.R. 29 would cost \$61 million over the 2008–2012 period and an additional \$3 million after that period, including adjustments for anticipated inflation. For this estimate, CBO assumes that H.R. 29 will be enacted before the end of calendar year 2008 and that the necessary amounts will be appropriated over the 2009–2013 period.

H.R. 29 would authorize the Bureau of Reclamation to construct a water recharge and recovery system that would benefit the Fallbrook Public Utility District and the Marine Corps Base at Camp Pendleton in California. The feasibility study for this project is in the early stages of development and will not be completed until 2008. For this estimate, CBO assumes that construction would begin in 2009 and would be completed in 2013. This estimate includes \$64 million for construction costs—the \$60 million that would be authorized by the bill plus adjustments for inflation, which also would be authorized by the bill.

Since the scope of the project is unclear, CBO cannot estimate the amount of funding needed for operations and maintenance. Any funds appropriated for operations and maintenance would be offset by payments to the Treasury from the district, except for those

costs allocated to Camp Pendleton. CBO expects that money would not be appropriated for this purpose until after 2012. The bureau has the authority to transfer the operations and maintenance responsibilities for the project to the district or another entity if an acceptable arrangement can be established.

After the project is constructed and once water is made available, the district would begin repaying its share of the capital costs of this project. Based on information from the bureau, CBO expects that the district would be responsible for repaying about \$26 million over the 40-year period following construction. Any such collections would be credited to the budget on an offsetting receipt (a credit against direct spending). A change in direct spending cannot be credited to H.R. 29, however, because such receipts are contingent upon future appropriation actions to construct the project.

Intergovernmental and private-sector impact: H.R. 29 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Enacting this bill would benefit the Fallbrook Public Utility District, and any costs that it might incur in association with the authorized project would be incurred voluntarily.

Estimate prepared by: Federal costs: Tyler Kruzich; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 29 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

